

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HELEN DEWITT

Claimant

VS.

FLESH COMPANY

Respondent

AND

**TIG PREMIER INS. CO. AND
LIBERTY MUTUAL FIRE INS. CO.**

Insurance Carriers

Docket No. 1,002,867

ORDER

Claimant requests review of the November 6, 2006 preliminary hearing Order entered by Administrative Law Judge Thomas Klein (ALJ).

ISSUES

The ALJ granted claimant's request for temporary total disability benefits (TTD) for a period of 10 weeks.

The claimant requests review of this determination asserting the ALJ exceeded his jurisdiction and ignored the uncontroverted evidence that establishes claimant's entitlement to TTD benefits for a 30 week period, rather than just 10 weeks.

Respondent argues the Board does not have jurisdiction to consider claimant's appeal request as the only issue is claimant's entitlement to TTD.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The compensability of claimant's claim is not in dispute. The only issue for purposes of this appeal is whether the ALJ erred in granting claimant a period of 10 weeks of TTD when the evidence offered at the hearing, and essentially uncontroverted by respondent, proves that claimant is entitled to 30 weeks of TTD.¹ Claimant has been and continues to be provided with treatment by authorized treating physicians. The 30 weeks in dispute represents an unexplained gap in the TTD payments.

At the preliminary hearing, respondent offered no justification for the gap in payments. Following the preliminary hearing, the ALJ issued his order granting claimant 10 weeks of TTD. Similarly, no explanation was given.

Before addressing the substance of claimant's appeal, this Board member must first consider whether there is jurisdiction to consider this matter.

This is an appeal from a preliminary hearing. K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified, all involving the underlying compensability of the claim. In addition, K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of TTD. So, while the Board does not have jurisdiction to consider the issue of whether a claimant is *entitled* to TTD or medical treatment as a result of a compensable claim, the Board does have jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction in granting or denying those benefits.²

Claimant obviously recognizes the limitation of the Board on this issue of TTD as she alleges the ALJ exceeded his jurisdiction in failing to grant the entire 30 week period of TTD benefits. After considering the record as a whole, this member of the Board finds that the claimant's appeal should be dismissed for lack of jurisdiction.

Admittedly, there is no explanation within the record that explains why the ALJ elected to grant claimant's request for TTD benefits but only for a 10 week period. The ALJ's preliminary hearing Order makes no mention of his reasoning, nor of what might have persuaded him to limit claimant's recovery in this matter. And after a complete review of the record, this Board Member is at a loss to explain the ALJ's decision. Nonetheless, there is no indicia that the ALJ improperly disregarded evidence or employed inappropriate legal reasoning. Absent more than an unexplainable result, particularly when this issue is not final and can be litigated again at a full hearing, this Board Member finds that the ALJ

¹ During the preliminary hearing, respondent's counsel suggested to the ALJ that claimant was terminated for insubordination during the disputed period. There was no evidence or testimony presented on this point. And respondent's brief to the Board does not argue that claimant is *not* entitled to the 30 weeks of TTD.

² K.S.A. 44-551(b)(2)(A).

did not exceed his jurisdiction. As a result, there is no jurisdiction for the Board to consider this appeal. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³ Accordingly, claimant's appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.⁴ Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the claimant's appeal of the Order of Administrative Law Judge Thomas Klein dated November 6, 2006, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of January, 2007.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Michael D. Streit, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

⁴ K.S.A. 44-534a.